

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

September 16, 2015

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bill Burton, Jim Shaffer and George Papandreas

MEMBERS ABSENT: Linda Herbst

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Cardoso called the meeting to order at 6:30 p.m. and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the August 19, 2015 hearing: Papandreas moved to approve as presented; seconded by Shaffer. Motion carried unanimously.

III. UNFINISHED BUSINESS:

A. CU15-07 / Meagan Deeley / 139 Linnehurst Street: Request by Meagan Deeley, for conditional use approval of a "Class 2 Home Occupation" at 139 Linnehurst Street; Tax Map 44, Parcel 156; R-1A, Single-Family Residential District. TABLED AT 19 AUG 2015 HEARING – WITHDRAWN BY APPLICANT.

B. V15-46 / Craft Built Homes, LLC / Munsey Street: Request by Kurtis Clinton, on behalf of Craft Built Homes, LLC, for variance relief from Article 1333.04 concerning a rear and side setback encroachment (corner of Munsey Street and Windsor Avenue); Tax Map 6, Parcel 28; R-1, Single-Family Residential District. TABLED AT 19 AUG 2015 HEARING – WITHDRAWN BY APPLICANT.

IV. NEW BUSINESS:

A. CU15-09 / Michael Alam / 3329 Collins Ferry Road: Request by Michael Alam, for conditional use approval of a "Class 2 Home Occupation" at 3329 Collins Ferry Road; Tax Map 2, Parcel 170; R-1, Single-Family Residential District.

Fletcher presented the Staff Report.

Cardoso recognized Michael Alam of 3329 Collins Ferry Road who stated he would average one car per day but no more than three (3) cars a week as he has a full time job outside of this business.

There being no comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

There being no comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU15-09 as revised; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The home occupation will be compatible with residential uses of the dwelling, in that:

The business will operate out of the attached integral garage that already has the required electrical outlets for cleaning and water and drain for washing.

Finding of Fact No. 2 – The home occupation will not change the residential character of the dwelling, in that:

Automobiles and motorcycles, as same are defined in the Planning and Zoning Code, being detailed will be worked on in the attached integral garage that was designed and constructed for such vehicles. There will be no additions to the principal building necessary for business operations.

Finding of Fact No. 3 – The home occupation will not detract from the residential character of the neighborhood, in that:

All work will take place inside so there will be no distractions at the residence. There will be no excess noise or filth created as a result of the business. Passersby would most likely not be able to tell that a home-based business was being run given the existing thick landscaping along the parameter of the petitioner's property.

Finding of Fact No. 4 – Congestion in the streets will not be increased, in that:

According to the petitioner, the proposed home-based business will only receive one (1) to two (1) customer a day and those automobiles and/or motorcycles, as defined in the Planning and Zoning Code, will be in the attached integral garage being serviced. There appears to be approximately seven (7) off-street parking spaces in the petitioner's existing driveway, so the proposed home occupation should not result in increased congestion in the streets.

Shaffer moved to grant conditional use approval for Case No. CU15-09 as requested with conditions; seconded by Papandreas. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That the petitioner shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code, which, among others, prohibits the home occupation from being conducted outdoors.
2. Detail services shall be limited to automobiles and motorcycles as same are defined in the Planning and Zoning Code.
3. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.
4. If the petitioner, as the sole beneficiary of this conditional use approval, wishes to make changes in the conduct of the home-based business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.

Cardoso reminded Mr. Alam that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- B. CU15-10 / M & J Property Holdings, LLC / Oakland Street:** Request by Mark J. Nesselroad, on behalf of M & J Property Holdings, LLC, for conditional use approval of an "Off-site Parking Facility" located near Oakland Street; part of Parcel 74 of Tax Map 6; B-2, Service Business District.

Fletcher presented the combined Staff Report for Agenda Items B. through G.

Cardoso recognized Joseph Shaffer, Esq., on behalf of M & J Holdings, who further explained the proposed project and distributed aerial photographs to explain the area in question.

Joseph Shaffer referred to the Comprehensive Plan and noted the area is a priority for infill and redevelopment. The existing building will be raised and replaced with a new building that will provide valuable amenities to the local community, such as retail space on the first floor and a restaurant on the second floor. The business will be accessible to University students and within walking distance to the professionals and visitors of the WVU Alumni Center, Health Sciences Center and the Rosenbaum Family House.

Joseph Shaffer explained that the setback variances and the landscape buffer are due to the corner location of the property with the slope. The proposed design of the parking lot would be more aesthetically pleasing and allow for a better drive pathway.

Joseph Shaffer noted they are proposing to use a cementitious system as they would like the building to match the University Park at Evansdale development and to fit in well to the neighboring developments. A brick veneer would be used to match the aesthetic of the WVU Alumni Center.

Joseph Shaffer explained there are letters of intent from WVU to make available approximately 59 off-site parking and five parking spaces would be available on-site. The off-site parking would be within walking distance with sidewalks along the path.

Burton asked if the parking on-site would be for visitors or for occupants. Joseph Shaffer explained the on-site parking would be for visitors with additional parking off-site for occupants and additional visitors.

Burton asked how visitors would know where to park. Joseph Shaffer stated the zoning ordinance requires a sign be displayed to direct customers to parking areas.

Papandreas asked which use would require the most parking. Joseph Shaffer explained the restaurant would require the most parking and explained the maximum number of spaces would be approximately 30 after calculating the gross floor area with the number of employees. The retail space would require approximately 20 parking spaces after calculating floor area. The business will have more than enough adequate parking when completed.

Burton asked if there is a contingency plan should the letters of intent from WVU would fall apart. Joseph Shaffer explained they have obtained strong commitments from WVU and the Planning

Department plans to add conditions on the requests that agreements have to be in place prior to issuing permits.

Burton asked if the agreements would be good for the life of the property which is customarily 40 years for commercial properties. Joseph Shaffer explained the agreements would be good for 40 years with an opportunity of renewal for an additional 15 years. The use of the materials would allow for the property to maintain an attractive and durable appearance for the life of the contract.

There being no further comments or questions by the Board, Cardoso asked Board members, the applicant, and the public present if anyone objected to combining the public hearings for the conditional use and variances petitions. There being no objections, Cardoso asked if anyone was present to speak in favor of or in opposition to the petitions.

Cardoso recognized (inaudible) of 203 Hillcrest Drive who stated the project will benefit the town and support the growth in the area.

Cardoso recognized George Caple, WVU Student Body President of 327 Willey Street who stated the project would benefit the students as the establishments will be located within walking distance of the freshman dorms.

Cardoso recognized Yasmine Mustafa of 203 Hillcrest Drive who stated there are many Muslim students located in the apartments nearby and the business would benefit these students as it is within walking distance of their Mosque and Islamic Center.

Cardoso recognized (inaudible) from 2005 Ices Fairy Drive who stated the establishments will benefit the community and the University and supports the proposed project.

Fletcher stated a letter from Daniel Kimble, President of Morgantown Area Chamber of Commerce, was received by Staff in support of the proposed project at 453 Oakland Street.

There being no further comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for CU15-10.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for CU15-10 as presented; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Much of the parking already exists and does not create congestion. Much of the parking is an expansion of an already existing parking lot. The parking is laid out appropriately with drive lanes, sidewalks, and landscaping. It will allow cars not to be parked in the street.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

It is open air parking and allows for efficient traffic/pedestrian flow.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

Occupants and customers of the adjacent 453 Oakland Street building will utilize the parking.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The parking is laid out to include 13 spaces adjacent to the on-site parking, 31 already existing spaces, and 15 spaces added to an already existing parking lot.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The parking is efficiently laid out to connect with on-site parking, an expanded lot, and already-existing spaces in conjunction with drive lanes and sidewalks.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

It will provide sufficient parking to the businesses at 453 Oakland Street.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The parking will be paved, and striped, connecting with sidewalks and landscaping, similar to parking areas on adjacent parcels.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

It will provide parking for the businesses at 453 Oakland Street, and much of it already exists or is an expansion of existing parking.

Papandreas moved to approve CU15-10 as requested with Staff recommended conditions; seconded by Burton. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That, prior to building permit issuance for the construction, the off-site parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. Additionally, the number of off-site parking spaces encumbered may not be less than the minimum number of spaces required for the use(s) that occupy the proposed two-story nonresidential building as set forth under Article 1345.06(A) of the Planning and Zoning Code.
2. With the exception of related landscaping and screening requirements, all requisite on-site and off-site parking spaces shall be designed, improved, paved, and striped in accordance with Article 1365.09 "Parking Development Standards" and lighting facilities developed in accordance with Article 1371.

C. V15-58 / M & J Property Holdings, LLC / 453 Oakland Street: Request by Mark J. Nesselroad, on behalf of M & J Property Holdings, LLC, for variance relief from Article 1345.06(B) concerning location of parking spaces at 453 Oakland Street; Tax Map 11, Parcel 83; B-1, Neighborhood Business District.

Fletcher read the Staff recommendations V15-58.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-58 as presented; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed parking spaces are in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot appears to restrict the development of adequate parking, landscaping, and internal driveway width without adding parking between the front façade and street. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed parking is consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed parking is consistent with surrounding properties and will permit a relatively small, angled, sloping, corner lot that is zoned B-1 to include additional parking and also sufficient drive lanes, landscaping, visibility, sidewalk, and similar positive attributes.

Shaffer moved to approve V15-58 as requested without conditions; seconded by Burton Motion carried unanimously.

- D. V15-53 / M & J Property Holdings, LLC / 453 Oakland Street:** Request by Mark J. Nesselroad, on behalf of M & J Property Holdings, LLC, for variance relief from Article 1345.04 concerning setback encroachments at 453 Oakland Street; Tax Map 11, Parcel 83; B-1, Neighborhood Business District.

Fletcher read the Staff recommendations for V15-53.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-53 as presented; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed setback distances are in character with, and allow for aesthetically-pleasing visibility of, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The small, angled, corner lot appears to restrict the development of adequate parking depth, landscaping, and internal driveway width without encroaching reasonably into the side and rear setbacks and efficiently utilizing an increased front setback. Most of the surrounding parcels are larger and regularly-shaped to accommodate R-3 multi-family developments and associated facilities and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner parcel but, at the same time, can provide a positive amenity for the surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed setback distances are consistent with surrounding properties and will permit use of a small, angled, corner lot that is zoned B-1 to provide a positive amenity for the surrounding R-3 uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed setback distances are consistent with surrounding properties and will permit a small, angled, corner lot that is zoned B-1 to include parking, drive lane, landscaping, visibility, and similar positive attributes.

Burton moved to approve V15-53 as requested without conditions; seconded by Papandreas and carried unanimously.

- E. V15-60 / M & J Property Holdings, LLC / 453 Oakland Street:** Request by Mark J. Nesselroad, on behalf of M & J Property Holdings, LLC, for variance relief from Article 1367 concerning landscape buffer standards at 453 Oakland Street; Tax Map 11, Parcel 83; B-1, Neighborhood Business District.

Fletcher read the Staff recommendations for V15-60.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-60 as presented; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed buffer is in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot appears to restrict the development of adequate parking, landscaping, and internal driveway width without reducing the buffer and efficiently utilizing the front setback. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed buffer is consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed buffer is consistent with surrounding properties, being at the rear of a building and parcel, it will permit a relatively small, angled, sloping, corner lot that is zoned B-1 to include additional parking and also sufficient drive lanes, landscaping, visibility, sidewalk, and similar positive attributes.

Papandreas moved to approve V15-60 as requested with conditions; seconded by Burton. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That, prior to building permit issuance for the construction, the proposed landscape buffer area shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the landscape buffer is located is encumbered by the landscape use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the landscape buffer area is accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
2. The petitioner shall work with the Planning Division and the Morgantown Utility Board in planning the most appropriate plant materials within the requisite landscape buffer area considering above and below ground utilities that may be present and the best bioswale design practices.

F. V15-59 / M & J Property Holdings, LLC / 453 Oakland Street: Request by Mark J. Nesselroad, on behalf of M & J Property Holdings, LLC, for variance relief from Article 1367 concerning dumpster enclosure location at 453 Oakland Street; Tax Map 11, Parcel 83; B-1, Neighborhood Business District.

Fletcher read the Staff recommendations for V15-59.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-59 as presented; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed dumpster location is in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot appears to restrict the development of adequate parking, landscaping, and internal driveway width without locating the dumpster to the immediately adjoining parcel at the rear of the building. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed dumpster location is consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed dumpster location is consistent with surrounding properties, being at the rear of a building and parcel, it will permit a relatively small, angled, sloping, corner lot that is zoned B-1 to include additional parking and also sufficient drive lanes, landscaping, visibility, sidewalk, and similar positive attributes.

Papandreas moved to approve V15-59 as presented with conditions; seconded by Shaffer. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That, prior to building permit issuance for the construction, the proposed trash enclosure facility location shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the trash enclosure is located is encumbered by the trash enclosure use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the trash enclosure is accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
2. That the trash enclosure shall be constructed with masonry materials to a height of no less than six (6) feet and design so that it integrates with and compliments the architectural vocabulary of the West Virginia University Erickson Alumni Center building. Additionally, the masonry enclosure must include an opaque access gate(s).

G. V15-57 / M & J Property Holdings, LLC / 453 Oakland Street: Request by Mark J. Nesselroad, on behalf of M & J Property Holdings, LLC, for variance relief from Article 1345.07 concerning cladding, window materials, and fenestration ratio standards at 453 Oakland Street; Tax Map 11, Parcel 83; B-1, Neighborhood Business District.

Fletcher read the Staff recommendations for V15-57.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-57 as presented; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed cladding, window materials, and fenestration ratio standards are in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot limits development to certain types of structures but allows for quality design and use of materials. Many of the surrounding properties include buildings with similar uses/applications of materials. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed cladding, window materials, and fenestration ratio standards are consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed cladding, window materials, and fenestration ratio standards are consistent with surrounding properties and will permit the use of high quality durable materials in an efficient and aesthetically pleasing manner on a relatively small, angled, sloping, corner lot that is zoned B-1.

Shaffer moved to approve V15-57 as requested without conditions; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded Mr. Shaffer that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

H. V15-56 / Bocci, LLC / 48 Donley Street: Request by Raymond Eddy, on behalf of Bocci, LLC, for variance relief from Article 1351.01(D) concerning curb cuts at 48 Donley Street; Tax Map 28, Parcels 14 through 17; B-4, General Business District.

Fletcher presented the combined Staff Report.

Cardoso recognized Raymond Eddy of 48 Donley Street who stated the parking lot is currently vacant and the owner would like to improve the lot by paving the area and providing a handicap accessible space.

Burton asked who currently utilized the parking lot. Eddy stated that contractors are currently using the lot, however spaces will be leased to members of the building after completion of the project.

There being no further comments or questions by the Board, Cardoso asked Board members, the applicant, and the public present if anyone objected to combining the public hearings for the conditional use and variances petitions. There being no objections, Cardoso asked if anyone was present to speak in favor of or in opposition to the petitions.

There being no comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for Case No. V15-56.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-56 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed curb cut will serve two (2) adjoining facilities, which include access to the proposed parking lot and access to the existing garbage enclosure. The sidewalk will be maintained as a pedestrian first sidewalk design similar to the design used at the Spruce Street Farmers Market Place Pavilion.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The location of the existing garbage enclosure to the proposed curb cut creates a need for longer curb cut and cannot be separated given limited space available to serve both the parking lot facility and the existing garbage enclosure facility.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It will allow for a less confusing entrance to this lot and the existing garbage enclosure.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The longer curb cut will provide safe and efficient access to both the parking lot facility and the existing garbage enclosure facility

- I. **V15-54 / Bocci, LLC / 48 Donley Street:** Request by Raymond Eddy, on behalf of Bocci, LLC, for variance relief from Article 1367 concerning landscaping and screening at 48 Donley Street; Tax Map 28, Parcels 14 through 17; B-4, General Business District.

Papandreas moved to approve V15-56 as requested without conditions; seconded by Burton and carried unanimously.

Fletcher read the Staff recommendations for Case No. V15-54.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-54 as revised; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The addition of landscaping at the entrance is provided for the intent to be matched. Any future building on the adjacent lot would eliminate any planting placed in the side yard area of this property.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

To create a functioning parking area with the desired number of parking spaces, the entire lot, up to the property line, appears to be needed given minimum parking space and drive aisle dimension

standards. The dimensional constraints of the site do not allow for additional landscaping at the side yard area.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The variance relief will allow the safe dimensions necessary for the parking layout given the petitioner's desired number of parking spaces.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

By reducing the number of proposed parking spaces from 12 spaces to 10 spaces, the newly gained space was programmed to increase the buffer areas and added additional screening at the entrance and exit of the proposed parking layout in an attempt to further the intent of the ordinance.

Papandreas moved to approve V15-54 as requested without conditions; seconded by Burton and carried unanimously.

- J. V15-55 / Bocci, LLC / 48 Donley Street:** Request by Raymond Eddy, on behalf of Bocci, LLC, for variance relief from Article 1351.01(C)(2) concerning private parking facilities at 48 Donley Street; Tax Map 28, Parcels 14 through 17; B-4, General Business District.

Fletcher read the Staff recommendations for Case No. V15-55

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-55 as revised; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The potential conflict intended to be addressed by this standard appears to be mitigated at the Warren Street driveway entrance by the proposed one-way parking lot layout. Additionally, the petitioner has eliminated two (2) parking spaces near the Donley Street from the original design for the purpose of meeting the spirit and intent of this standard. Only a small portion of the parking space closest to Donley Street is closer than 20 feet from the adjoining parking lot crosswalk and the petitioner has created an accessible space at said location in an area void of accessible parking spaces.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The dimensions and geometry of the parking lot area along with the existing garbage enclosure near the proposed Donley Street entrance, the existing natural gas meter near the proposed Warren Street exit, and minimum dimensions standards for the parking spaces and the drive aisle appear to significantly reduce parking lot layout design options to achieve the petitioner's desired number of parking spaces.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It will prevent the removal of an addition parking spot from an already limited parking area.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The impact felt by the variance will be at the farthest limits of a 20 foot setback from the sidewalk along Donley Street. The one (1) space that slightly encroaches into the 20 foot setback standard near the Donley Street sidewalk appears to have the benefit of using the apron in front of the existing garbage enclosure for back-out movement. Additionally, sight lines for both pedestrians and motorists do not appear to be obstructed by the Marina Tower building or its appurtenances. The potential conflict intended to be addressed by this standard appears to be mitigated at the Warren Street driveway entrance by the proposed one-way parking lot layout.

Papandreas moved to approve V15-55 as requested without conditions; seconded by Burton. Motion carried unanimously.

Cardoso reminded Mr. Eddy that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

V. ANNOUNCEMENTS:


- Fletcher announced that a Special Hearing is scheduled for Monday, October 12, 2015 at 6:30 p.m. for an Administrative Appeal petition that has been filed.
- Fletcher stated Staff is preparing the 2016 Planning Commission and BZA hearing calendar and asked for direction on whether or not the December 2016 BZA hearing should be moved from December 21, 2016 to December 14, 2016. By acclamation, the December 2016 hearing will be scheduled for December 14, 2016.

VI. ADJOURNMENT: 7:30 PM

MINUTES APPROVED:

October 21, 2015

BOARD SECRETARY:


Christopher M. Fletcher, AICP